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the law of evidence "are recorded the empirical results from the observation of witnesses," they have not yet been subjected to the criticism of modern psychology (p. 91).

He ranges himself essentially with those who deny the freedom of the will, or power of moral liberty (p. 112). Nobody claims that the protist has it. We have been evolved from the protist. Therefore we have not got it. Q. E. D. (p. 109). Had we, it would have been an exception to the law of the conservation of energy, and so go to "destroy the foundation to modern science" (p. 110).

But while "judgment is a mechanical process, admitting no freedom of choice" (p. 111), and moral guilt is no cause for social punishment, the criminal is still "a phenomenon of individual and social pathology" (p. 115), and biology can permit his elimination and repression, because these are social forms of natural selection and adaptation (p. 125).

The United States moved early in the direction of trying to reform the criminal, but not by any method "inspired by scientific ideas" (p. 143).

The author describes and approves the German practice of requiring the Judges, on acquitting one charged with crime, to decide whether his arrest was so wholly unjustifiable as to call for indemnity from the public treasury (pp. 242, 271); the Italian plan of providing means of instruction in scientific police methods (p. 249); the French mode of identification known as the *portrait parle*, consisting of a description of certain features of the physiognomy (p. 253); and the Eastern and English mode based on records of finger-prints (p. 254). The defense of criminals by a public officer is advocated, and the refusal to accept a plea of guilty (p. 277).

The author inclines to long words, and phraseology of a foreign cast. His treatise contains little that is not a reproduction of what has been written by European jurists and anthropologists, particularly those of Italy, Germany, England, and France. Spanish books apparently were not consulted. Thus, in speaking of the selection of medical experts, he does not allude to the views expressed by Professor Dorado of the University of Salamanca in his important treatise on *Los Peritos Medicos y La Justicia Criminal*, published in 1906.

It may be said, in general, that the author writes from the view point of a *doctrinaire* and evidently lacks familiarity with the practice of his own country in criminal cases. Thus, it is stated (p. 353) that in legal theory the testimony of one witness is as good in quality as that of another. Nothing could be farther from the truth.

TREATY-MAKING POWER UNDER THE CONSTITUTION OF THE UNITED STATES. By ROBERT T. DEVLIN. San Francisco: BANCROFT-WHITNEY Co. 1908. pp. lxx, 866.

The author is correct in characterizing the treaty power as among the powers of first importance granted to the Federal government by the Constitution. Along with such works as "Treaties in Force," Snow's "Cases in International Law" and Moore's "Digest," this work contributes valuable material for the student of public and private law. The author points out how vague and uncertain are legislative acts and treaties

until the courts have passed upon them. The fields entered by law-makers of today are so novel and the growing causes for appeal and repeal so numerous that legislation needs not only the sanction of the President but also the interpretation and approval of the courts. In the treatment of a subject so varied in its scope as the treaty-making power, the author deals with material of peculiar richness.

The book opens with a brief survey of the history of the treaty power before the Constitution. The limitations on the government in this regard under the Confederation argued strongly for the adoption of the new instrument, which in the various clauses bearing on the subject gave ample authority for dealing with foreign affairs. The transfer of the treaty power from the States to the Federal government and the doctrine of the binding force of all treaties upon the State were important steps in the creation of the National government. The manner in which the study of the Southern Confederacy is approached from this angle is interesting. The suggestion is made that the Civil War in the political sense was the commission on the part of the States of unconstitutional acts, since the limitations upon the State powers were overstepped in the entrance into alliances.

The author discusses the constitutional provision that a treaty is a part of the law of the land and thus subject to the decision of the Supreme Court. This raises the point somewhat unsettled in English law as to whether a treaty is an "act of State." A full and enlightening discussion of the Japanese situation resulting from the enactment in 1906 of the California School Law is given. The absence of conflict between the Nation and the State is pointed out and the fact that the right to school privileges is not inherent in citizenship is emphasized. Interesting reference is made to the peculiar and somewhat confusing phraseology in the treaty clause of the Constitution, i. e., "all treaties made or which shall be made under the authority of the United States." The wording was then necessary to cover certain treaties already made and which were to continue binding under the new government.

The various topics, falling within the scope of a discussion of the treaty power, as immigration, expatriation, extradition and rights in war and peace, are clearly though briefly stated. A comprehensive appendix contains many excerpts from treaties and conventions covering a wide range of topics and so arranged as to make the work useful as a reference in this sphere of the law. The work is well indexed, contains a carefully analyzed table of contents, and refers to an unusual number of well-selected cases. In the frequent expressions of the author's personal views, safe and conservative ground is taken.

BOOKS RECEIVED:

THE LAW OF TORTS. By FRANCIS M. BURDICK. 2nd Ed. Albany: BANKS & Co. 1908. pp. lxxxix, 550.

THE CONTROL OF PUBLIC UTILITIES. In the form of an Annotation of the PUBLIC SERVICE COMMISSION LAW OF THE STATE OF NEW YORK. By WILLIAM M. IVINS and HERBERT DELAVAN MASON. New York: BAKER, VOORHIS & Co. 1908. pp. lxxi, 1149.